United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1903.

No. 1348.

No. 17, SPECIAL CALENDAR.

EDWIN TOBIN, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 9, 1903.

In the Court of Appeals of the District of Columbia.

EDWIN TOBIN, Plaintiff in Error,
vs.
THE DISTRICT OF COLUMBIA. } No. 1348.

a In the Police Court of the District of Columbia, April Term 1903.

DISTRICT OF COLUMBIA
vs.
EDWIN TOBIN. } No. 234,974. Information for Sunday Bar.

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 (*Information.*)

In the Police Court of the District of Columbia, April Term, A. D. 1903.

DISTRICT OF COLUMBIA, *ss:*

James L. Pugh, Jr., assistant corporation counsel, who, for the said District of Columbia prosecutes in this behalf in his proper person, comes here into court and causes the court to be informed and complains that Edwin Tobin, late of the District of Columbia aforesaid, is the keeper of a licensed bar-room or place where intoxicating liquors are sold, under the provisions of an act of Congress entitled "An act regulating the sale of intoxicating liquors in the District of Columbia," approved March 3, 1893, on the 5th day of April in the year one thousand nine hundred and three, on Louisiana avenue, northwest, in the city of Washington, county of Washington, District of Columbia aforesaid.

And the said James L. Pugh, Jr., Esq., assistant corporation counsel, as aforesaid, comes here into court, as aforesaid, and causes the court to be informed and complains that Edwin Tobin, as aforesaid, on said 5th day of April in the year afroesaid, did fail to have his bar-room or place of business for the sale of intoxicating liquors closed on said day, the said day being Sunday. Contrary to and in violation of an act of Congress, entitled "An act regulating the sale of intoxicating liquors in the District of Columbia," approved March 3, 1893, and constituting a law of the District of Columbia.

JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared E. C. Goss this 6th day of April, A. D. 1903 and made oath before me that the facts set forth in the foregoing information are true.

[Seal Police Court of District of Columbia.]

W. H. RUFF,
Deputy Clerk of the Police Court of the District of Columbia.

2 In the Police Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
EDWIN TOBIN. } No. 234,974.

On complaint charging defendant with not keeping his saloon closed on Sunday, April 5, 1903.

Bill of Exceptions.

Be it remembered that the defendant, Edwin Tobin, having been duly arraigned and pleaded "not guilty" to the complaint in the above entitled case, and the case coming on for trial on the eleventh day of June, 1903, the defendant appearing in court in person, waived the empanelling of a jury and consented to *to* a trial of the case by the court; and thereupon the District of Columbia called as a witness EDWIN C. GOSS, sergeant of police in the District of Columbia, who, having been duly sworn, testified substantially as follows:

That he was a member of the police force in the District of Columbia;

That the defendant, Edwin Tobin, kept a saloon in said District, at 456 Louisiana avenue, N. W.;

That on Sunday, April 5, 1903, about nine o'clock in the morning, witness went to the saloon of said Tobin and looked into the front windows of the same (there being no shades or screens to prevent) and saw no one there, and there was apparently no one in the saloon;

That the said Tobin occupies two houses which adjoin each other all under the same street number;

That one of these buildings is occupied as a saloon and the other as the dwelling house of said Tobin, except a portion of the basement which is used as a billiard-room, and which has a connection with the saloon by a flight of four or five steps up from the floor of the billiard-room and through the doorway into the saloon;

That in said residence building where the billiard-room occupies a portion of the basement, there is back of said billiard-room a small room or hall, and back of that a kitchen used by said Tobin for family purposes;

That witness went into a hallway in said second building to a door, which he found open, leading down into the small room

or hallway back of the billiard-room and between that
3 and the kitchen;

That he found Mrs. Tobin, wife of the defendant, at the kitchen, who told him that Mr. Tobin was still in bed;

That he went from there into the billiard-room where he found two persons, Peter Chaconas and J. L. Chaconas, who were standing near one of the billiard or pool tables and facing, and only a few feet from, the stairs and doorway which lead into the saloon, the door into which was open;

That at about the same time Edwin Tobin, the defendant, came from the saloon room down the said stairs with a bottle of beer in his hands;

That witness asked Tobin what he got the beer for, and Tobin told him he got it to drink himself and proceeded to drink a portion of the contents of the bottle, throwing the remainder away.

And thereupon, on cross-examination, said witness testified in substance:

That Tobin told him he went in there to get a bottle of beer for himself;

That he (Tobin) did not know at the time he went into the saloon room that the two men above named were in the billiard room, that they had not come there by his consent or by his invitation and had not asked for beer, and that he was not getting, and did not get, the beer for them.

The defendant in open court then admitted that he held a retail liquor license from the District of Columbia for the sale of liquors at his place of business above stated, duly and regularly issued under the provisions of existing law.

Thereupon the District of Columbia rested its case, and the foregoing being in substance all the evidence adduced by the prosecution, the defendant, by his counsel, demurred to the sufficiency of said evidence to sustain a conviction and moved the court to discharge the defendant, which said demurrer and motion were then and there overruled; to which ruling of the court the defendant then and there excepted.

Thereupon the defendant submitted himself as a witness in his own behalf and, being duly sworn, testified in substance as follows:

4 That he kept a saloon at the place stated;

That he occupied, with himself and family, for saloon and residence purposes respectively, two adjoining buildings on the same premises, the saloon-room being in one and the other building being occupied as a residence by himself and family, with the exception of a room in the basement used as a pool and billiard room;

That he keeps the gas turned on and the lights burning in the saloon building, as is required by the regulations and rules of the District of Columbia, during the night time;

That on Sunday morning April 5, at nine o'clock or thereabouts,

he went from his said kitchen through the intervening hall into the billiard-room, and from there walked up the steps and through the doorway into his saloon room for the purpose of turning out the gas lights and getting from his ice-box a bottle of beer for his own use;

That when he went into the billiard-room and from thence into the saloon room there was no one else present in either of said rooms;

That he did not expect any one to come there;

That he had invited no one;

That neither his pool-room nor saloon-room were open to the public, and were in fact not open at all by any outside doorway, but simply by the doorways which connected them with his residence part of the building;

That while he was in the saloon-room turning out the lights and getting said bottle of beer the two men, Peter Chaconas and J. L. Chaconas, came in, as he supposed, through the hall, and when he came out of the doorway of the saloon-room and started down the steps they were standing in the billiard-room;

That neither of them had sent him for beer or for liquors or had asked him to secure the same;

That he had no knowledge of their presence there;

That he was bringing a bottle of beer out for his own use, and not for the purpose of selling or giving it away to any other person;

That the two persons above named were dealers in vegetables, from whom he bought his weekly supplies, and that they had called upon him (as they stated afterwards) for the purpose of collecting some monies he owed them for vegetables;

That as he came out of the saloon-room and down the steps Sergeant Edwin C. Goss, the witness above, and Policeman F. S. Hughlett, came into the billiard-room from the passageway between that and the kitchen and accused him of having gone into the saloon-room for the purpose of getting beer for customers, which he immediately denied and stated, as testified to by Sergeant Goss, that he had got the beer and was bringing it out for his own use.

And thereupon defendant called as witnesses PETER CHACONAS and J. L. CHACONAS who, each being duly and severally sworn, testified substantially as follows:

That they were in the habit of supplying defendant with vegetables from week to week and that they usually went to his house on Sundays, having more time on that day, to collect their bills; that they went there by the hall on the Sunday morning in question and met Mrs. Tobin, wife of the defendant, at the kitchen door, who, upon inquiry, told them that she did not think Mr. Tobin had come down from his bed-room as she had not yet seen him that morning;

That thereupon they waited in the kitchen for ten or fifteen minutes and, the doors being open from the kitchen through the hallway into the billiard-room, they saw a new pool table in there, which they stopped to examine;

That no one asked them to go in there;

That they did not know Mr. Tobin was downstairs or had gone into the saloon-room;

That they went into the pool and billiard-room of their own motion and stood there examining the said pool table when for the first time, they saw Mr. Tobin as he was coming out of the doorway and down the saloon steps with a bottle of beer in his hand;

That at the time they were standing near the pool table and about ten or twelve feet from the steps leading up into the saloon-room;

That they had not asked for beer;

That they had not been invited to come there and did not go into said billiard-room for the purpose of getting any drinks of any kind;

That about the same time the sergeant of police and policeman above named came from the hallway into the billiard-room and had the conversation with Mr. Tobin as substantially testified to by the other witnesses.

On cross-examination Mr. J. L. Chaconas was asked if he didn't state to the two police officers, while in the billiard room, that he had come there to get an order and had already got an order from Mr. Tobin for the next week's vegetables. Witness denied that he made any such statement, but said he told them that he came there to get an order for the vegetables.

The testimoby further disclosed the fact that the said Peter Chaconas and J. L. Chaconas were brothers; Greeks by birth; and that J. L. Chaconas spoke English somewhat imperfectly, and Peter Chaconas spoke English only fairly well.

Thereupon the defense rested and the District of Columbia called to the stand Sergeant Goss, who testified that one or both of
6 the Chaconas brothers at the billiard room had made the statement that they came there to get an order and had already got an order from Mr. Tobin for the next week's vegetables. He further testified that when he looked in at the front of the saloon he saw no gas-light inside.

The District of Columbia then called Mr. F. S. HUGHLETT, who testified that he was a policeman; was in said billiard and pool room at the time in question, and that one or both of the Chaconas brothers had made the statement that they came there to get and had already got from Mr. Tobin orders for the next week's vegetables. He also testified that when he looked in at the front of the saloon he saw no gas-light.

Thereupon the testimony closed, the foregoing being in substance all the testimony presented at the trial.

The defendant, by his attorney, then interposed to the entire evidence a demurrer to its sufficiency to warrant a conviction, and moved the court for an order discharging the defendant, which said demurrer and motion made as aforesaid, were each then and there severally overruled; to which ruling and adjudication by the court the defendant, by his counsel, then and there duly excepted; and

Thereupon the defendant, by his counsel, gave notice in open court of his intention to apply for a writ of error upon the exceptions aforesaid and requested a stay of proceedings as provided for in the statutes.

And afterwards, upon the 16th day of June, 1903, the court on the testimony adjudged the defendant guilty and sentenced him to pay a fine of fifty dollars.

Therefore, the defendant, Edwin Tobin, presents this his said bill of exceptions to the said court and asks the court to settle
7 and sign the same, in accordance with the statutes in such case made and provided and in accordance with the rules of the Court of Appeals of the District of Columbia in such case made and provided.

I. G. KIMBALL,
Judge Police Court.

Presented to the court aforesaid on the fifteenth day of June, 1903.

8 (*Copy of Docket Entries.*)

In the Police Court of the District of Columbia, April Term, A. D 1903.

DISTRICT OF COLUMBIA *vs.* EDWIN TOBIN. } No. 234,974. Information for Sunday Bar.

Defendant arr*ia*gned Thursday, April 9, 1903. Plea: Not guilty. Jury trial demanded. Recognizance in the sum of two hundred dollars entered into to appear in the police court, Frank P. Hall, surety.

Continued to April 21, May 5, 14, June 10, 11.

June 11, 1903.—Demand for a jury trial withdrawn.

Ex*a*ceptions taken to the rulings of the court on matters of law and notice given by defendant in open court of his intention to apply to a justice of the Court of Appeals of the District of Columbia for a writ of error.

Judgment: Guilty. Sentence suspended.

June 15, 1903.—Bill of exceptions filed.

June 16, 1903.—Bill of exceptions settled and signed.

Sentence: To pay a fine of fifty dollars and, in default, to be committed to the workhouse for the term of sixty day. Recognizance in the sum of two hundred dollars entered into on writ of error to the Court of Appeals of the District of Columbia upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in the police court and abide by and perform its judgment, and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of

Columbia and abide by and perform its judgment in the premises. James C. Leonard, surety.

Thereupon further proceedings stayed for ten days.

June 25, 1903.—Writ of error received from the Court of Appeals of the District of Columbia.

9 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 8 inclusive, to be true copies of originals in cause No. 234,974 wherein The District of Columbia is plaintiff and Edwin Tobin defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 2d day July, A. D. 1903.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

10 Filed Jun- 25, 1903. Joseph Y. Potts, Clerk Police Court, D. C.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable I. G. Kimball, judge of the police court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and Edwin Tobin, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey, Chief Justice of the

said Court of Appeals, the 25th day of June, in the year of our Lord one thousand nine hundred and three.

[Seal Court of Appeals, District of Columbia.]

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by
SETH SHEPARD,
Associate Justice of the Court of Appeals of the District of Columbia.

[Endorsed:] Filed Jun- 25, 1903. Joseph Y. Potts, clerk police court, D. C.

Endorsed on cover: District of Columbia police court. No. 1348. Edwin Tobin, plaintiff in error, *vs.* The District of Columbia. Court of Appeals, District of Columbia. Filed Jul- 2, 1903. Robert Willett, clerk.

Court of Appeals, District of Columbia.

October Term, 1903.

No. 1348.

No. 17, Special Calendar.

EDWIN TOBIN, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This case is here on a writ of error to reverse a judgment of the police court of the District of Columbia. An information was filed in said court against the plaintiff in error charging him with being "the keeper of a licensed bar-room or place where intoxicating liquors are sold," and that on the 5th day of April, 1903, he "did fail to have his bar-room or place of business for the sale of intoxicating liquors closed on said day, the said day being Sunday, contrary to and in violation of an act of Congress entitled, an 'An act regulating the sale of intoxicating liquors in the District of Columbia,' approved March 3, 1893, and constituting a law of the District of Columbia."

On April 9, 1903, the defendant pleaded not guilty, and demanded a jury trial. On June 11, 1903, the defendant, in open court, withdrew his demand for a jury trial and consented to a trial of his case by the court; the defendant was thereupon tried by the court, without a jury, convicted, and sentenced to pay a fine of fifty dollars, and, in default of the

payment of the fine imposed, to be committed to the work-house for the term of sixty days (R., p. 6).

A bill of exceptions was signed by the trial judge on June 16, 1903.

ARGUMENT.

The sole question in the case relates to the sufficiency of the testimony as the basis of a conviction.

The testimony is set forth on pages 2, 3, 4, and 5 of the record, and it is deemed unnecessary to reproduce it here. It was undoubtedly sufficient to support a conviction. It will be observed that the defendant and his two witnesses, Chaconas brothers, two Greeks, who spoke Engilish very imperfectly, *were discredited* (R., 5). *The court did not believe them;* and, doubtless, the court was influenced in some measure by *their demeanor upon the witness stand.*

In such a case as the one at bar it is sufficient to prove "a course of conduct tending to show" that the accused violated the law in the manner alleged in the information.

Lauer *vs.* D. C., 11 App. D. C. 453.

A tippling-house must be closed on the Sabbath day, and *if the owner keep it open but for a moment, it is a violation of the statutes.*

Monses *vs.* State, 78 Ga. 110.
Williams *vs.* State, 100 Ga. 511.

And the purpose of its being open is not material. Though the *purpose may have been a perfectly innocent and harmless one, that does not lessen the criminality of lhe act.*

Klug *vs.* State, 77 Ga. 734.
People *vs.* Waldvogel, 49 Mich. 337.
People *vs.* Blake, 52 Mich. 566.
People *vs.* Talbert, 120 Mich. 486.

In the case of Hannan *vs.* District of Columbia, 12 App. D. C. 265, it was decided that the *opening of a bar-room for the sole purpose of ingress or egress to or from the other part of the house*—a case of absolute necessity—*was not a violation of the statute* which the plaintiff in error is charged with having violated. But in the course of its opinion, the court, speaking through Mr. Chief Justice Alvey, said:

"The bar must be kept closed, and the bar-room—that is, the room devoted to the uses of the bar—must be kept closed against all who would resort to such place to obtain liquor on Sunday; and this requirement must be *strictly observed and enforced.* * * * *If, indeed, it had been shown that the door was open, or any other way provided, by which even a single individual could have procured liquor from the bar on Sunday, the statute would have been violated, and the proprietor of the bar would be liable to punishment.*"

The opening of the bar-room of the plaintiff in error was not for the purpose of ingress or egress to or from any other part of his house, and was *not necessary.* The defendant himself testified that he went "into his saloon-room for the purpose of turning out the gas lights (which, according to the two policemen, *were already out*) *and getting from his ice-box a bottle of beer.*" (R., 4, 5.) Was not his bar-room open, within the meaning of the statute, according to his own testimony?

It was certainly not incumbent upon the District to prove a sale of liquor on Sunday, to procure a conviction, *if the bar-room was open within the intendment of the law.* While the statute prohibits the *sale* of intoxicants on Sunday, the *keeping open* of a place where liquors are sold is an entirely distinct and independent offense. If a liquor-dealer *keeps his place of business open on Sunday* and then and there *sells liquor*, he is guilty of two separate and distinct offences, and may be punished for both.

Mr. Justice Morris, in delivering the opinion of the court in Lehman *vs.* District of Columbia, 19 App. D. C. 217, amongst other things, said:

"If the mere sale of liquor on Sunday was all that was intended to be prohibited by the statute, it would have been easy to have said so, without any reference to the matter of opening or closing the bar-room. But we cannot consider the prohibition against opening the bar-room on Sunday as mere surplusage; and plainly it was intended to have some meaning. Assuredly it is not necessary to seek far for the reasons which dictated the propriety of the prohibition, as distinguished from the prohibition against sale. Those reasons are obvious. It might be conceded that the prohibition was intended to prevent the opening of the bar-room for the purpose of sale, and not for a lawful purpose. But the presumption is plain that *any opening of a bar-room, in such manner as that the public may have access to it, whether any one actually resorts to it or not, is for the purpose of sale, until it is made to appear, as was done inthe case of Hannan vs. District of Columbia, that the opening was only to the extent that it was necessary for the use and occupation of the remainder of the property.* No unreasonable interpretation of the statute is required to find a distinct prohibition in it against the opening of bar-rooms on Sunday, without reference to the fact of sale, or whether any such sale takes place or not."

The case of Sullivan *vs.* District of Columbia, 20 App. D. C. 29, is to the same effect.

In construing the Act of March 3, 1893, this court, in Lauer *vs.* District of Columbia, 11 App. D. C. 453, said:

"The statute was enacted with the *double purpose of increasing the revenues of the District and providing a remedy for many of the evils that experience had shown to attend the unrestrained traffic in liquors, at retail,* to be drunk upon the premises where sold. Notwithstanding the penal clauses, without which it would be a dead letter, *the act is to be regardeda s a general revenue and remedial statute, and given a*

liberal and, at the same time, reasonable construction, in adi of the remedy, rather than a strict and narrow one in the interest only of those who violate or evade its provisions."

It is respectfully submitted that there is no error in the record, and that the judgment of the police court should be affirmed.

ANDREW B. DUVALL,
A. LEFTWICH SINCLAIR,
Attorneys for Defendant in Error.